

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

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In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.¹

PROMESA

Title III

No. 17 BK 3283-LTS

Re: ECF No. 770, 1085

(Jointly Administered)

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In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

PUERTO RICO HIGHWAYS AND
TRANSPORTATION AUTHORITY (“HTA”)

Debtor.

PROMESA

Title III

No. 17 BK 3567-LTS

**This Response relates only to HTA
and shall be filed in the lead Case
No. 17 BK 3283-LTS and Case No.
17 BK 3567-LTS.**

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**RESPONSE OF THE PUERTO RICO HIGHWAYS AND TRANSPORTATION
AUTHORITY TO MOTION FOR MODIFICATION OF THE AUTOMATIC STAY
FILED BY REXACH HERMANOS, INC. [ECF NO. 770]**

To the Honorable United States District Court Judge Laura Taylor Swain:

The Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”) as the entity authorized to act on behalf of the Puerto Rico Highways and Transportation Authority (“HTA”) pursuant to the authority granted to it under the *Enabling Act of the Fiscal Agency and*

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); and (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686). (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

Financial Advisory Authority, Act 2-2017, respectfully submits this response (the “Response”) to the *Motion for Modification of the Automatic Stay* [Case No. 17-3283, ECF No. 770] (the “Motion”) filed by Rexach Hermanos, Inc. (“Movant”).²

RESPONSE

1. By the Motion, Movant request modification of the automatic stay set forth in Bankruptcy Code section 362 (the “Title III Stay”), made applicable to this Title III case by PROMESA section 301(a), to continue with the eminent domain action filed by HTA against real property owned by Movant and other co-defendants, pending before the Puerto Rico Court of First Instance, Superior Court of San Juan (the “State Court”), captioned Autoridad de Carreteras y Transportación de P.R. v. Corporación Rexach Hermanos, Inc. y Citizens Renovation & Dev. Corp., Case No. K EF2001-0272 (the “State Court Action”). Given the nature and procedural stage of the State Court Action, HTA does not object to a partial modification of the Title III Stay to permit the State Court Action to proceed in order for the State Court to make a determination on the issue of just compensation; provided, however, that the Title III Stay shall remain in place with respect to the entry and execution of a judgment and any provisional remedies. HTA believes the modification of the Title III Stay proposed herein is appropriate given the advanced stage of the State Court Action (discovery has been completed and the parties are prepared for settlement conference, pre-trial hearing, and subsequent trial).

2. Nothing contained in this Response should be construed as a waiver or modification of the Title III Stay to permit the prosecution against HTA of any claim by anyone other than Movant as provided for herein, and HTA reserves all rights, defenses, and protections with respect to any other motions for relief for stay or any other matters pending in HTA’s Title

² The Financial Oversight and Management Board for Puerto Rico, as the Debtors’ representative pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”), has authorized AAFAF to file this Response on behalf of HTA.

III case. HTA further reserves its rights with respect to any claim currently pending in the State Court Action or hereinafter asserted by Movant, including any claims regarding the dischargeability of just compensation claims in a plan of adjustment under PROMESA. HTA asserts that as a potential prepetition, unsecured creditor of HTA, any judgment in favor of Movant is subject to the claim resolution process that will be undertaken in the Title III case. See In re Residential Capital, LLC, Case No. 12-12020 (MG), 2012 WL 3860586, at *4 (Bankr. S.D.N.Y. Aug. 8, 2012) (“Claims for damages against the Debtors are the usual grist for the bankruptcy claims allowance process and absent unusual circumstances the bankruptcy court remains the appropriate forum to resolve such claims.”).

CONCLUSION

3. For the foregoing reasons, HTA requests that the Court grant a partial modification of the Title III Stay to allow the State Court Action to proceed in order for the State Court to make a determination on the issue of just compensation; provided that the Title III Stay shall continue to apply in all other respects to the State Court Action, including as to entry and execution of a judgment and provisional remedies.

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Dated: August 23, 2017
San Juan, Puerto Rico

Respectfully submitted,

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